

109TH CONGRESS
1ST SESSION

S. 32

To enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extended active duty, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. DAYTON (for himself, Mr. REID, Mr. DORGAN, Mr. LEAHY, Ms. MIKULSKI, Mr. CORZINE, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extended active duty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,*
3 This Act may be cited as the “National Guard and
4 Reserve Bill of Rights Act of 2005”.

5 **SEC. 2. PERIODS OF DEPLOYMENTS OF RESERVES OVER-
6 SEAS.**

7 (a) UNITED STATES CENTRAL COMMAND DEPLOY-
8 MENTS.—

23 (b) COMMUNICATION OF LENGTHS OF DEPLOYMENT
24 PERIODS TO RESERVES IN OPERATION IRAQI FREE-
25 DOM.—

10 (B) While the members of the Armed
11 Forces have clearly and consistently dem-
12 onstrated their dedication to duty, much uncer-
13 tainty has arisen among them about the lengths
14 of their deployments and when they will be re-
15 turned to their loved ones. This confusion im-
16 pairs our troops' morale and places undue
17 strain on their families and their civilian em-
18 ployers.

19 (C) Fairness to the men and women of the
20 Armed Forces deployed overseas requires that
21 the Department of Defense—

22 (i) have clear policies regarding
23 lengths of deployment periods; and

1 (ii) communicate these policies and
2 other deployment-related information to
3 them and their families.

4 (D) While many military units were de-
5 ployed months before Operation Iraqi Freedom
6 was launched on March 19, 2003, the Depart-
7 ment of Defense did not announce a policy
8 about the length of deployments until August
9 2003.

10 (E) Even after the Department of Defense
11 issued its so-called “one year boots-on-the-
12 ground” policy regarding lengths of deployment
13 periods, many of the members of units deployed
14 overseas in Operation Iraqi Freedom learned
15 shortly before their scheduled return dates that
16 their deployments would be extended for
17 months beyond the one-year period provided
18 under that policy.

19 (2) REPORT.—

20 (A) REQUIREMENT FOR REPORT.—Not
21 later than March 1, 2005, the Secretary of De-
22 fense shall submit to the Committees on Armed
23 Services of the Senate and the House of Rep-
24 resentatives a report on Department of Defense
25 policies governing the length of deployment pe-

14 (C) CONTENT.—The report under this
15 paragraph shall contain a discussion of the
16 matters described in subparagraph (A), includ-
17 ing the following matters:

18 (i) The process by which the Depart-
19 ment of Defense determined its policy re-
20 garding the length of deployment periods.

21 (ii) The reason that no such policy
22 was in place before Operation Iraqi Free-
23 dom began.

24 (iii) A comparison of the policy during
25 Operation Iraqi Freedom with Department

1 of Defense deployment policies that applied
2 to previous contingency operations.

3 (iv) The timeliness of the process for
4 notifying reserve component units for acti-
5 vation.

6 (v) The process for communicating
7 with activated reserve component members
8 and their families about demobilization
9 schedules.

10 (vi) The family support programs pro-
11 vided by the National Guard and other re-
12 serve components for families of activated
13 Reserves.

14 (vii) An assessment of lessons learned
15 about how the increased operations tempo
16 of the National Guard and other reserve
17 components can be expected to affect read-
18 iness, recruitment and retention, civilian
19 employers of Reserves, and equipment and
20 supply resources of the National Guard
21 and the other reserve components.

22 (D) MATTERS FOR PARTICULAR EMPHA-
23 SIS.—In the discussion of the matters included
24 in the report under this subsection, the Sec-

3 (i) lessons learned, including defi-
4 ciencies identified; and

5 (ii) near-term and long-term corrective actions to address the identified deficiencies.
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11 SEC. 3. MILITARY PAY.

12 (a) CORRECTION OF PAY PROBLEMS FOR ACTIVATED
13 RESERVE COMPONENT PERSONNEL.—

18 (A) the recommendations for executive ac-
19 tion set forth in the report of the Comptroller
20 General of the United States entitled “Military
21 Pay, Army National Guard Personnel Mobilized
22 to Active Duty Experienced Significant Pay
23 Problems”, dated November 2003; and

24 (B) the recommendations for executive ac-
25 tion set forth in the report of the Comptroller

1 General of the United States entitled "Military
2 Pay, Army Reserve Soldiers Mobilized to Active
3 Duty Experienced Significant Pay Problems",
4 dated August 2004.

18 (b) REENLISTMENT BONUS FOR SELECTED RE-
19 SERVE.—

20 (1) EXPANDED ELIGIBILITY.—Subsection (a)(1)
21 of section 308b of title 37, United States Code, is
22 amended by striking “16 years” and inserting “17
23 years”.

24 (2) INCREASED MAXIMUM AMOUNT.—Sub-
25 section (b) of such section is amended by striking

1 “(b) BONUS AMOUNT; PAYMENT.—(1) The amount
2 of a bonus under this section may not exceed—”
3 and all that follows through the end of paragraph
4 (1) and inserting the following:

5 “(b) BONUS AMOUNT.—The amount of a bonus
6 under this section may not exceed \$15,000.”.

7 (3) OPTION TO RECEIVE LUMP-SUM PAY-
8 MENT.—Section 308b of title 37, United States
9 Code, is further amended—

10 (A) by striking paragraphs (1) and (2) of
11 subsection (c); and

12 (B) in paragraph (2) of subsection (b), by
13 striking “(2) Bonus payments” and all that fol-
14 lows through “If the bonus” in the second sen-
15 tence and inserting the following:

16 “(c) PAYMENT IN LUMP SUM OR INSTALLMENTS.—

17 (1) A bonus payable to a member under this section shall
18 be paid, upon the election of the member, in one lump
19 sum or in partial payments under paragraph (2).

20 “(2) If the bonus”.

21 (4) REDESIGNATION OF PROVISIONS.—Such
22 section is further amended—

23 (A) by redesignating subsections (d), (e),
24 and (f), as subsections (e), (f), and (g), respec-
25 tively; and

1 (B) in subsection (c)(3)—

2 (i) by striking "(3) In the case of"
3 and inserting "(d) PERSONNEL IN CER-
4 TAIN CONTINGENCY OPERATIONS.—In the
5 case of'; and

6 (ii) by striking “paragraph (1)(B)
7 or”.

8 SEC. 4. TRICARE FOR RESERVE COMPONENT PERSONNEL.

9 (a) EXPANDED ELIGIBILITY OF READY RESERVE
0 MEMBERS UNDER TRICARE PROGRAM.—

20 (2) PERMANENT AUTHORITY.—Subsection (l) of
21 such section is repealed.

22 (3) CONFORMING REPEAL OF OBSOLETE PROVI-
23 SIONS—Such section is further amended—

(A) by striking subsections (i) and (j); and

1 (B) by redesignating subsection (k) as sub-
2 section (i).

3 (b) CONTINUATION OF NON-TRICARE HEALTH
4 BENEFITS PLAN COVERAGE FOR CERTAIN RESERVES
5 CALLED OR ORDERED TO ACTIVE DUTY AND THEIR DE-
6 PENDENTS.—

7 (1) REQUIRED CONTINUATION.—

16 "(a) PAYMENT OF PREMIUMS.—The Secretary con-
17 cerned shall pay the applicable premium to continue in
18 force any qualified health benefits plan coverage for the
19 members of the family of an eligible reserve component
20 member for the benefits coverage continuation period if
21 timely elected by the member in accordance with regula-
22 tions prescribed under subsection (j).

23 "(b) ELIGIBLE MEMBER; FAMILY MEMBERS.—(1) A
24 member of a reserve component is eligible for payment of
25 the applicable premium for continuation of qualified

1 health benefits plan coverage under subsection (a) while
2 serving on active duty pursuant to a call or order issued
3 under a provision of law referred to in section
4 101(a)(13)(B) of this title during a war or national emer-
5 gency declared by the President or Congress.

6 “(2) For the purposes of this section, the members
7 of the family of an eligible reserve component member in-
8 clude only the member’s dependents described in subpara-
9 graphs (A), (D), and (I) of section 1072(2) of this title.

10 “(c) **QUALIFIED HEALTH BENEFITS PLAN Cov-**
11 **ERAGE.**—For the purposes of this section, health benefits
12 plan coverage for the members of the family of a reserve
13 component member called or ordered to active duty is
14 qualified health benefits plan coverage if—

15 “(1) the coverage was in force on the date on
16 which the Secretary notified the reserve component
17 member that issuance of the call or order was pend-
18 ing or, if no such notification was provided, the date
19 of the call or order;

20 “(2) on such date, the coverage applied to the
21 reserve component member and members of the fam-
22 ily of the reserve component member; and

23 “(3) the coverage has not lapsed.

24 “(d) **APPLICABLE PREMIUM.**—The applicable pre-
25 mium payable under this section for continuation of health

1 benefits plan coverage for the family members of a reserve
2 component member is the amount of the premium payable
3 by the member for the coverage of the family members.

4 “(e) MAXIMUM AMOUNT.—The total amount that the
5 Department of Defense may pay for the applicable pre-
6 mium of a health benefits plan for the family members
7 of a reserve component member under this section in a
8 fiscal year may not exceed the amount determined by mul-
9 tiplying—

10 “(1) the sum of one plus the number of the
11 family members covered by the health benefits plan,
12 by

13 “(2) the per capita cost of providing TRICARE
14 coverage and benefits for dependents under this
15 chapter for such fiscal year, as determined by the
16 Secretary of Defense.

17 “(f) BENEFITS COVERAGE CONTINUATION PE-
18 RIOD.—The benefits coverage continuation period under
19 this section for qualified health benefits plan coverage for
20 the family members of an eligible reserve component mem-
21 ber called or ordered to active duty is the period that—

22 “(1) begins on the date of the call or order; and
23 “(2) ends on the earlier of—

24 “(A) the date on which the reserve compo-
25 nent member’s eligibility for transitional health

1 care under section 1145(a) of this title termi-
2 nates under paragraph (3) of such section; or
3 “(B) the date on which the reserve compo-
4 nent member elects to terminate the continued
5 qualified health benefits plan coverage of the
6 member’s family members.

7 “(g) EXTENSION OF PERIOD OF COBRA Cov-
8 ERAGE.—Notwithstanding any other provision of law—

9 “(1) any period of coverage under a COBRA
10 continuation provision (as defined in section
11 9832(d)(1) of the Internal Revenue Code of 1986)
12 for an eligible reserve component member under this
13 section shall be deemed to be equal to the benefits
14 coverage continuation period for such member under
15 this section; and

16 “(2) with respect to the election of any period
17 of coverage under a COBRA continuation provision
18 (as so defined), rules similar to the rules under sec-
19 tion 4980B(f)(5)(C) of such Code shall apply.

20 “(h) NONDUPLICATION OF BENEFITS.—A member of
21 the family of a reserve component member who is eligible
22 for benefits under qualified health benefits plan coverage
23 paid on behalf of the reserve component member by the
24 Secretary concerned under this section is not eligible for

1 benefits under the TRICARE program during a period of
2 the coverage for which so paid.

3 “(i) REVOCABILITY OF ELECTION.—A reserve com-
4 ponent member who makes an election under subsection
5 (a) may revoke the election. Upon such a revocation, the
6 member’s family members shall become eligible for bene-
7 fits under the TRICARE program as provided for under
8 this chapter.

9 “(j) REGULATIONS.—The Secretary of Defense shall
10 prescribe regulations for carrying out this section. The
11 regulations shall include such requirements for making an
12 election of payment of applicable premiums as the Sec-
13 retary considers appropriate.”.

14 (B) CLERICAL AMENDMENT.—The table of
15 sections at the beginning of such chapter is
16 amended by inserting after the item relating to
17 section 1078a the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for de-
pendents of certain Reserves called or ordered to active duty.”.

18 (2) APPLICABILITY.—Section 1078b of title 10,
19 United States Code (as added by paragraph (1)),
20 shall apply with respect to calls or orders of mem-
21 bers of reserve components of the Armed Forces to
22 active duty as described in subsection (b) of such
23 section, that are issued by the Secretary of a mili-
24 tary department before, on, or after the date of the

1 enactment of this Act, but only with respect to qual-
2 ified health benefits plan coverage (as described in
3 subsection (c) of such section) that is in effect on or
4 after the date of the enactment of this Act.

5 SEC. 5. CHILD CARE FOR CHILDREN OF MEMBERS OF
6 ARMED FORCES ON ACTIVE DUTY FOR OPER-
7 ATION ENDURING FREEDOM OR OPERATION
8 IRAQI FREEDOM.

9 (a) CHILD CARE FOR CHILDREN WITHOUT ACCESS
10 TO MILITARY CHILD CARE.—

11 (1) AUTHORITY.—In any case where the chil-
12 dren of a covered member of the Armed Forces are
13 geographically dispersed and do not have practical
14 access to a military child development center, the
15 Secretary of Defense may, to the extent funds are
16 available for such purpose, provide such funds as are
17 necessary to permit the member's family to secure
18 access for such children to State licensed child care
19 and development programs and activities in the pri-
20 vate sector that are similar in scope and quality to
21 the child care and development programs and activi-
22 ties the Secretary would otherwise provide access to
23 under subchapter II of chapter 88 of title 10, United
24 States Code, and other applicable provisions of law.

13 (b) PRESERVATION OF SERVICES AND PROGRAMS.—
14 The Secretary shall provide for the attendance and partici-
15 pation of children in military child development centers
16 and child care and development programs and activities
17 under subsection (a) in a manner that preserves the scope
18 and quality of child care and development programs and
19 activities otherwise provided by the Secretary.

20 (c) FUNDING.—Amounts otherwise available to the
21 Department of Defense and the military departments
22 under this Act may be available for purposes of providing
23 access to child care under subsection (a).

24 (d) DEFINITIONS.—In this section:

13 SEC. 6. USERRA IMPLEMENTING REGULATIONS.

14 (a) REQUIREMENT FOR REGULATIONS.—Subsections
15 (a) and (b)(1) of section 4331 of title 38, United States
16 Code, are amended by striking “may prescribe” and in-
17 serting “shall prescribe”.

18 (b) CLARIFICATION OF RIGHT TO MERIT PAY IN-
19 CREASES.—The regulations prescribed for the implemen-
20 tation of chapter 43 of title 38, United States Code, under
21 section 4331 of such title shall include regulations that
22 clarify that the entitlement of persons returning to em-
23 ployment under such chapter to receive pay increases
24 under merit pay systems of employers may not be denied
25 on the basis of lack of work performance evaluations for

1 periods of absence for active duty in the uniformed serv-
2 ices.

3 **SEC. 7. IMPROVED EDUCATIONAL ASSISTANCE BENEFITS**
4 **FOR MEMBERS OF THE SELECTED RESERVE.**

5 (a) INCREASE IN AMOUNT OF BASIC EDUCATIONAL
6 ASSISTANCE.—

7 (1) IN GENERAL.—Section 16131(b) of title 10,
8 United States Code, is amended to read as follows:
9 “(b) Except as provided in subsections (d) through
10 (f), each educational assistance program established under
11 subsection (a) shall provide for payment by the Secretary
12 concerned, through the Secretary of Veterans Affairs, to
13 each person entitled to educational assistance under this
14 chapter who is pursuing a program of education of an edu-
15 cational assistance allowance at the following monthly
16 rates:

17 “(1) For such a program of education pursued
18 on a full-time basis, at the monthly rate equal to the
19 applicable percentage (as defined in paragraph (3))
20 of the rate that applies for the month under section
21 3015(a)(1) of title 38.

22 “(2)(A) Subject to subparagraph (B), for such
23 a program of education pursued on less than a full-
24 time basis, at an appropriately reduced rate, as de-

1 terminated under regulations which the Secretaries
2 concerned shall prescribe.

3 “(B) No payment may be made to a person for
4 less than half-time pursuit of such a program of
5 education if tuition assistance is otherwise available
6 to the person for such pursuit from the military de-
7 partment concerned.

8 “(3) In this subsection, the term ‘applicable
9 percentage’ means, with respect to months occurring
10 during—

11 “(A) fiscal year 2005, 33 percent;
12 “(B) fiscal year 2006, 37 percent;
13 “(C) fiscal year 2007, 41 percent;
14 “(D) fiscal year 2008, 45 percent; and
15 “(E) fiscal year 2009, and each subsequent
16 fiscal year, 50 percent.”.

17 (2) EFFECTIVE DATE.—The amendments made
18 by paragraph (1) shall take effect on October 1,
19 2005, and shall apply with respect to educational as-
20 sistance allowances under section 16131(b) of such
21 title paid for months after September 2005.

22 (b) EXPANSION OF ELIGIBILITY REQUIREMENTS FOR
23 MEMBERS OF THE SELECTED RESERVE HAVING SERVED
24 ON ACTIVE DUTY FOR A PERIOD OF 24 NON-CONSECU-

1 TIVE MONTHS UNDER CHAPTER 30 OF TITLE 38,

2 UNITED STATES CODE.—

3 (1) CREDIT FOR 24 MONTHS OF ACTIVE DUTY
4 SERVICE OVER A PERIOD OF 5 YEARS.—Subsection
5 3012(a) of title 38, United States Code, is amended
6 in paragraphs (1)(A)(i), (1)(B)(i), and (1)(C)(iii)(I)
7 by striking “two years of continuous active duty”
8 each place it appears and inserting “a cumulative
9 period of 24 months during any 5-year period”.

10 (2) CONFORMING AMENDMENT.—Subsection (b)
11 of section 3012 of such title is amended in para-
12 graph (1) by striking “during such two years” and
13 inserting “at any time during such 5-year period”.

14 (3) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply on or after October 1,
16 2005.

17 **SEC. 8. REDUCTION IN AGE FOR RECEIPT OF MILITARY RE-**

18 **TIRED PAY FOR NONREGULAR SERVICE.**

19 (a) REDUCTION IN AGE.—Section 12731(a)(1) of
20 title 10, United States Code, is amended by striking “at
21 least 60 years of age” and inserting “at least 55 years
22 of age”.

23 (b) APPLICATION TO EXISTING PROVISIONS OF LAW
24 OR POLICY.—With respect to any provision of law, or of
25 any policy, regulation, or directive of the executive branch,

1 that refers to a member or former member of the uni-
2 formed services as being eligible for, or entitled to, retired
3 pay under chapter 1223 of title 10, United States Code,
4 but for the fact that the member or former member is
5 under 60 years of age, such provision shall be carried out
6 with respect to that member or former member by sub-
7 stituting for the reference to being 60 years of age a ref-
8 erence to the age in effect for qualification for such retired
9 pay under section 12731(a) of title 10, United States
10 Code, as amended by subsection (a).

11 (c) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect on the first day of the first
13 month beginning on or after the date of the enactment
14 of this Act and shall apply to retired pay payable for that
15 month and subsequent months.

16 **SEC. 9. DEPUTY UNDER SECRETARY OF DEFENSE FOR PER-**
17 **SONNEL AND READINESS (RESERVE AF-**
18 **FAIRS).**

19 (a) ESTABLISHMENT OF POSITION.—

20 (1) POSITION AND DUTIES.—Chapter 4 of title
21 10, United States Code, is amended by inserting
22 after section 136a the following new section:

3 “(a) There is a Deputy Under Secretary of Defense
4 for Personnel and Readiness (Reserve Affairs), appointed
5 from civilian life by the President, by and with the advice
6 and consent of the Senate.

7 “(b) The Deputy Under Secretary of Defense for Per-
8 sonnel and Readiness (Reserve Affairs) shall have as his
9 principal duty the overall supervision of reserve component
10 affairs of the Department of Defense.”.

“136b. Deputy Under Secretary of Defense for Personnel and Readiness (Reserve Affairs).”

15 (b) EXECUTIVE LEVEL IV.—Section 5315 of title 5,
16 United States Code, is amended by inserting after “Dep-
17 erty Under Secretary of Defense for Personnel and Readi-
18 ness.” the following:

19 "Deputy Under Secretary of Defense for Per-
20 sonnel and Readiness (Reserve Affairs).".

21 (c) ELIMINATION OF POSITION OF ASSISTANT SEC-
22 RETARY OF DEFENSE FOR RESERVE AFFAIRS.—

4 (A) by striking paragraph (2); and

5 (B) by redesignating paragraphs (3), (4),
6 and (5), as paragraphs (2), (3), and (4), re-
7 spectively.

10 (A) AUTHORIZED NUMBER.—Subsection
11 (a) of such section is amended by striking
12 “nine” and inserting “eight”.

13 (B) CONFORMING AMENDMENT.—Section
14 5315 of title 5, United States Code, is amended
15 by striking “(9)” after “Assistant Secretaries of
16 Defense” and inserting “(8)”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 subsection (c) shall take effect on the date on which a
19 person is first appointed as Deputy Under Secretary of
20 Defense for Personnel and Readiness (Reserve Affairs).

○